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July 19, 1994

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JUL 19 1994

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: In the Matter of
Implementation of Section
309(j) of the Communications
Act - Competitive Bidding
PP Docket No. 93-253

Dear Mr. Caton:

Transmitted herewith on behalf of Tri-State Radio Co. is an original and eleven (11) copies of its "Comments in Support of Mercury Communications, Inc. Request for Clarification" filed with respect to the above-referenced matter.

Should any questions arise with respect to this matter, please communicate directly with this office.

Respectfully submitted,



Richard S. Becker
Attorney for Tri-State Radio Co.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)

PP Docket No. 93-253

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JUL 19 1994

To: The Commission

**COMMENTS IN SUPPORT OF
MERCURY COMMUNICATIONS, INC.
REQUEST FOR CLARIFICATION**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Tri-State Radio Co. ("Tri-State"), by its attorneys and pursuant to 47 C.F.R. §1.429, hereby supports the "Request For Clarification" ("Request") submitted by Mercury Communications, Inc. ("Mercury") in the above-captioned proceeding on June 22, 1994.

1. Mercury's Request sought reconsideration and clarification of that portion of the Commission's Third Report and Order, PP Docket No. 93-253, FCC 94-98 (May 24, 1994) (hereinafter "Third R&O"), which addressed eligibility to participate in auctions for paging response channels in the 900 MHz narrowband Personal Communications Service ("Narrowband PCS"). Specifically, Section 24.130(a) of the Commission's Rules restricts eligibility to apply for paging response channels to, "paging licensees licensed pursuant to Parts 22 and 90 of this chapter as of June 24, 1993, and which operate at least one base station within the service area for which the licensee requests such channel."¹

¹47 C.F.R. §24.130(a). This restriction was imposed by the Commission in its Memorandum Opinion and Order, GN Docket No. 90-314 and ET Docket No. 92-100, 9 FCC Rcd 1337 (1994) (hereinafter "MO&O"), on reconsideration of the original Narrowband PCS rules as

Mercury sought clarification of this requirement to confirm that after the initial round of paging response channel auctions, paging licensees authorized after June 24, 1993, will be eligible, without restriction, to apply in their authorized service area for any paging response channels that remain available.²

2. Tri-State hereby supports Mercury's position in its Request that the June 24, 1993, cut-off date established by Section 24.130(a) of the Commission's Rules should only apply to eligibility to participate in the initial paging response channel auctions to be conducted by the Commission. Tri-State believes that in order to ensure the continued dynamic growth and increasing competitiveness of the paging industry, the Commission must make clear that any paging response channels not licensed pursuant to the initial round of auctions should be available to all paging licenses, regardless of when their paging systems were authorized.

3. Tri-State must also take this opportunity to support the proposition that the June 24, 1993, eligibility cut-off date for participation in the initial paging response channel auctions should be modified to reflect a more recent date. Even though Tri-State itself would be eligible to bid on paging response channels in numerous areas of the country because many of Tri-State's paging

adopted in the First Report and Order, GN Docket No. 90-314 and ET Docket No. 92-100, 8 FCC Rcd 7162 (1993) (hereinafter "First R&O"). The June 24, 1993, eligibility cut-off date was adopted because it was the adoption date of the First R&O. MO&O, 9 FCC Rcd at 1341-1342.

²Request, p.1-2.

systems were authorized and operating prior as of June 24, 1993,³ Tri-State believes that a later cut-off date would allow more paging entities to be eligible to bid for paging response channels in the initial auctions. This would dramatically increase the degree of competition in the paging industry (and the corresponding benefits of higher quality service at lower cost) by allowing the maximum number of paging licensees to obtain paging response capability. Paging response capability will most likely become an important asset for paging licensees who wish to maintain competitiveness in the future. In addition, increasing the pool of eligible bidders in the initial paging response channel auctions will maximize government revenues.

4. Accordingly, Tri-State respectfully submits that the Section 24.130(a) cut-off date should be modified to specify that any entity licensed for and operating a Part 22 or Part 90 paging system in a given Major Trading Area ("MTA") or Basic Trading Area ("BTA") as of a date sixty (60) days before the auction for paging response channels in that MTA or BTA should be eligible to bid.⁴ At a minimum, Tri-State submits that the Commission should adopt a more logical cut-off date than the June 24, 1993, adoption date of the First R&O. As set forth above, the existing cut-off date was

³See Petition For Reconsideration filed by Tri-State on June 22, 1994, with respect to the Third R&O in the above-captioned proceeding at footnote 3.

⁴This sixty (60) day period will allow sufficient time for bidders to establish their eligibility and make the necessary filings (including Form 175 short-form applications and upfront payments) to participate in the paging response channel auctions.

only adopted in the MO&O on reconsideration of the First R&O.⁵ Accordingly, the Commission should at least alter the cut-off date specified in Section 24.130(a) of the Commission's Rules to specify the March 4, 1994, adoption date of the MO&O.

WHEREFORE, for all of the foregoing reasons, Tri-State respectfully supports the Request submitted by Mercury in the above-captioned proceeding and Tri-State requests that the Commission modify the cut-off date specified in Section 24.130(a) of the Commission's Rules as proposed herein.

Respectfully submitted,

TRI-STATE RADIO CO.

By: Richard Becker

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Its Attorneys

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Date: July 19, 1994

⁵See note 1, supra.

CERTIFICATE OF SERVICE

I, Vicky Chandor, a secretary in the law firm of Becker & Madison, Chartered, hereby certify that I have on this 19th day of July, 1994, sent by First Class United States mail, postage prepaid, copies of the foregoing "**COMMENTS IN SUPPORT OF MERCURY COMMUNICATIONS, INC. REQUEST FOR CLARIFICATION**" to the following:

Allen S. Wolfbiss, President
Mercury Communications, Inc.
421 Willis Avenue
Williston Park, NY 11596


Vicky Chandor